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C O N F I D E N T I A L SECTION 01 OF 02 TOKYO 001027

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E.O. 12958: DECL: 04/14/2013
TAGS: EINV ENRG PGOV OECD JA
SUBJECT: METI EXPLAINS STANCE ON J-POWER CASE

REF: TOKYO 956 AND PREVIOUS

Classified By: Ambassador J. Thomas Schieffer. Reasons 1.4 (b)(d).

¶1. (C) Summary: Japan's Ministry of Economy, Trade and Industry (METI) has determined the proposed additional investment by UK-based Children's Investment Master Fund (TCI) in electricity wholesaler Electric Power Development Company (known as J-Power) constitutes a potential threat to Japan's public order and, according to a senior METI official, has made that case to the Ministry of Finance's (MOF) Customs and Foreign Exchange Council. The Council next meets April 15 to decide on a final recommendation to the government. Once it has that report, the GOJ will convey its decision to TCI. Knowing USG interest in this case, the METI official will travel to Washington April 15 to explain the Ministry's position. In those meetings, Washington officials should emphasize the importance of a transparent public explanation of the rationale for the GOJ's decision and encourage, to the extent possible, mitigation that would address government concerns while allowing the investment to proceed. End summary.

¶2. (C) METI Deputy Director General for Trade and Economic Cooperation Nobuhiko Sasaki met EMIN April 14 to explain METI's stance on the J-Power case. According to Sasaki, METI has determined that TCI's planned doubling of its ownership stake in J-Power to 19.9 percent has the potential to "disturb public order", as defined in Article 27(3)(i)(a) of the Foreign Exchange and Foreign Trade Control Law. The law sets out criteria under which the government is to review proposed FDI in sensitive sectors. METI based its determination on TCI's demand for J-Power's management to realize a minimum 10 percent return on equity and 4 percent return on assets. In METI's analysis, meeting these targets would require the company to cut its investment and maintenance budget, or to postpone or cancel its Oma nuclear power project. Either outcome, METI argues, could mean possible power supply disruptions in the medium term. METI has met six times with TCI representatives since January but

the Fund's response to METI's concerns was inadequate, according to METI Department Director General for the Electric and Gas Industry Hidehiko Nishiyama, who accompanied Sasaki.

¶3. (C) EMIN asked Sasaki whether the GOJ is considering suggesting some sort of mitigation if the MOF Council recommends blocking TCI's investment. Sasaki emphasized Japanese law "does not allow METI to bargain" with a potential investor, implying the GOJ must either approve or reject a proposed investment. (Note: Article 27(5) of the Foreign Exchange Law authorizes the GOJ to "recommend changes to the content pertaining to the inward direct investment, etc. or to discontinue the inward direct investment" implying mitigation may be an option. Sasaki's response may indicate METI is not interested in mitigation in this case. End note.)

¶4. (C) EMIN reminded Sasaki that a number of cases in recent months had raised international concerns about Japan's investment climate, and the U.S. is watching this case to understand better how Japan deals with investment in sensitive sectors. In response to Sasaki's assertions about how the USG might proceed under our laws and regulations, EMIN noted, CFIUS establishes timetables and puts certain obligations on the USG. In Japan, the burden of proof seems to be on the investor. Sasaki restated the J-Power case is unique and does not represent a change to the GOJ's overall pro-FDI policy. He added that over the past three years, the GOJ has approved 760 investment proposals under the Foreign Exchange Law and only in the J-Power case has it extended deliberations beyond the initial 30-day review period.

¶5. (U) Japan's business press has criticized GOJ opposition to TCI's plans. In an April 12 editorial, the Nikkei asserted J-Power's role in managing critical parts of the country's electricity grid is not sufficient justification to block TCI's investment. While acknowledging the national interest in ensuring a stable supply of electricity as well as promoting nuclear power, "the government still owes the public and investors a clear and understandable explanation for why this specific investment is such a threat to the nation's interest that it must be stopped," the Nikkei said, and concluded, "the government should find a solution consistent with both policy imperatives."

¶6. (C) Comment: Despite TCI's efforts to make this case a high-profile symbol of whether Japan is really open to FDI, METI's stance may not be fundamentally an effort to block foreign investment in J-Power. According to J-Power's most recent annual report, 40 percent of the company's shareholders are already non-Japanese and, overall, Japan had strong FDI inflows in 2007. The crux of this case is METI's concern about who has effective control of J-Power, tempered by the Ministry's ongoing mistrust of the role of investment funds, especially in managing critical public services. Whatever the MOF council recommends, the case will help clarify GOJ "redlines" regarding foreign investment in critical infrastructure. Washington officials who meet Sasaki this week might emphasize the importance of the GOJ providing clear explanations of its concerns and reasoning in the case to reassure investors about Japanese investment policies.
SCHIEFFER